

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

DOUGLAS SCOTT McALPIN,

Petitioner,

vs.

LEROY KIRKEGARD, Warden,  
Montana State Prison;  
ATTORNEY GENERAL OF THE  
STATE OF MONTANA,

Respondent.

CV 12-143-M-DLC-JCL

ORDER

**FILED**

**NOV 27 2013**

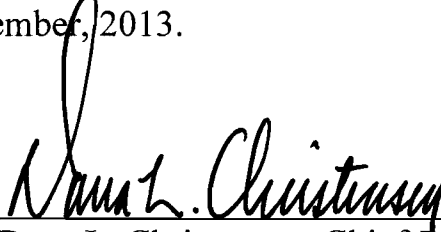
Clerk, U.S. District Court  
District Of Montana  
Missoula

Pro se Petitioner Douglas Scott McAlpin has filed a motion for a temporary restraining order and preliminary injunction. Petitioner raises new allegations in his motion that are not appropriate for resolution in this habeas action. Ninth Circuit law holds that “habeas jurisdiction is absent, and a § 1983 action proper, where a successful challenge to a prison condition will not necessarily shorten the prisoner’s sentence,” *Ramirez v. Galaza*, 334 F.3d 850, 859 (9th Cir. 2003), or where there is no “potential relationship between his claim and the duration of his confinement,” *Docken v. Chase*, 393 F.3d 1024, 1031 (9th Cir. 2004).

Accordingly, IT IS ORDERED that the motion (Doc. 22) is DENIED. If Petitioner wishes to raise the issues alleged in his motion, he must do so in a

separate civil action. A form is enclosed with this Order which Petitioner may use to file a separate civil action, if he wishes to do so.

DATED this 27<sup>th</sup> day of November, 2013.

  
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Dana L. Christensen, Chief Judge  
United States District Court